



Comptroller General  
of the United States

Washington, D.C. 20548

*Thomas*

## Decision

**Matter of:** Koester Contracting Corporation

**File:** B-270618

**Date:** December 28, 1995

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### DECISION

Koester Contracting Corporation protests the award of a contract to Hardaway Construction Corporation by the Department of the Army under invitation for bids No. DABT23-95-B-0087.

The protest, as filed with our Office, does not establish a basis for challenging the agency's action and, accordingly, must be dismissed.

Koester protests that the Army improperly allowed Hardaway to correct an alleged mistake in its bid. Koester states that "an alleged mistake is not clear within the bid schedule itself based on the format of the bid documents and the multitude of work items included within each lump-sum figure," and that the "characterization of the alleged mistake is well beyond normal supposition of a reasonable, clerical mistake. . . ."

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest, Section 21.1(c)(4), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.1(c)(4)), and that the grounds stated be legally sufficient. Section 21.1(e), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.1(e)). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge-Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335.

The protester has not done that here. The mistake in bid rules of the Federal Acquisition Regulation (FAR) provide a mechanism for granting relief to a bidder who establishes, after bid opening, that there is a mistake in the bid submitted. In most cases, the bidder, upon establishing the existence of a mistake, is permitted to withdraw the bid. FAR § 14.406-3(c). The FAR provides that an agency may permit correction of a low bid where the bidder presents clear and convincing evidence of both a mistake and of the bid intended. FAR § 14.406-3(a). Workpapers may constitute clear and convincing evidence of the existence of a mistake and the

intended bid. Ogden Allied Eastern States Maintenance, B-239550, Aug. 28, 1990, 90-2 CPD ¶ 166.

The regulations, while they do not permit mistake in bid relief for errors in judgment, allow bid correction for various types of non-judgmental errors that go beyond mere clerical errors. While Koester suggests that there may be only a judgmental error involved here, it provides no details to support its position and does not establish the likelihood that in this procurement an error subject to the bid correction rules could not have been made. Thus, Koester provides no information indicating the reasonable likelihood that the bid correction procedures used by the agency to allow an upward correction in the awardee's bid was inconsistent with applicable regulations. Accordingly, the protest is dismissed.

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